

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.380 of 2000

Date of Decision : October 11, 2006.

Inderjit Kaur and others Petitioners

Vs.

Mohinder Kaur Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Kuldip Sanwal, Advocate
for the petitioners.

Mr.H.S.Awasthi, Advocate
with Mr.Sunil Saini, Advocate
for the respondent.

* * *

P.S.Patwalia, J. (Oral) :

C.M.No.19719-C-II of 2006 :

Application is allowed.

LRs of deceased Inderjit Kaur, petitioner no.1 are permitted to
be brought on record subject to all just exceptions.

Main Case :

The present revision petition has been filed by the tenant

against the judgment dated 21.1.1997 passed by the Rent Controller, Gurdaspur whereby an ejectment application filed by the respondent-landlord was accepted and the petitioner was directed to hand over the vacant possession of the shop in dispute to the landlord as also the judgment dated 3.11.1999 passed by the Appellate Authority, Gurdaspur whereby first appeal filed by the petitioner-tenant was dismissed.

Even though eviction of the petitioner was sought on more than one ground, however the only ground which found favour with the Rent Controller and the Appellate Authority is that the petitioner had changed the user of the shop in dispute from that of a Medical Practitioner's clinic to a Sports' shop without written consent of the landlord-applicant. A reading of the judgments of the courts below would show that the shop was originally taken on rent prior to the partition of this country by Dr.Kartar Singh who was a Homeopathic Medical Practitioner. He was carrying on medical practice in the said shop. After his death his son Dr.Tarlochan Singh who was also a Homeopathic Medical Practitioner started carrying on practice in the said shop. Dr.Tarlochan Singh expired on 5.4.1991. After the death of Tarlochan Singh, his wife who was arrayed as respondent in the eviction petition, started carrying on the business of selling sports' goods in the said shop. The goods were purchased from K.T.Sports, Gurdaspur and Inderjit Kaur, widow of Tarlochan Singh had, in the first instance, engaged a servant who used to help her in running the business. This continued up to April 1992. Thereafter her son-in-law Nonihal Singh joined the shop after his retirement and started helping her in running the business in the demised premises.

The Rent Controller has noted that it was not denied even by

the witnesses who appeared for the petitioner-tenant being Ajit Kumar RW-1 and Rakesh Mahajan RW-2 that Dr.Tarlochan Singh was running his medical practice in the said shop and thereafter the business of selling of sports' goods was started in the premises. The facts as stated herein above were also not denied by Nonihal Singh who appeared as RW-3 and who is the son-in-law of Dr.Tarlochan Singh. To similar effect is the statement of Inderjit Kaur herself. On the basis of the aforesaid the Rent Controller recorded the following findings :-

“It is in the statement of Nonihal Singh (RW3) that the demised premises alongwith the remaining building was taken on rent by Dr.Kartar Singh, father-in-law of respondent no.1 and the remaining building except the demised premises was vacated by Dr.Kartar Singh before partition of the country when he constructed his own house. Dr.Kartar Singh used to run his clinic in the demised premises and after his death Dr.Tarlochan Singh started his medical practitioner business in the demised premises. It is in his statement that in August, 1991, the respondents started selling the sports goods in the demised premises after the death of Dr.Tarlochan Singh. It is also in the statement of Smt.Inderjit Kaur (RW4) that she has got no knowledge about the homeopathy. Now there is no family member of Dr.Tarlochan Singh, who knows homeopathy.

Admittedly, sports goods are being sold in the demised premises under the name and style of Tarlochan Sports and this fact has not been denied by the respondents in the written reply or in evidence. Thus, it is clear change of user by the respondents without written consent of the applicant. Otherwise from the evidence led by the respondents, it is clear that before partition of the country in 1947 Dr.Kartar Singh, father-in-law of respondent no.1 was in occupation of the demised premises as tenant and now the respondents and their predecessors in interests have used the demised premises for more than 50 years as tenants. So, then applicant is entitled to possession of the demised premises for her use and occupation.”

A reading of the findings extracted above would show that it was found that firstly there was a clear change of user by the respondents without the written consent of the landlord. This position was virtually accepted by all the witnesses who appeared for the defendants. There is another important fact which has weighed not only with the Rent Controller but also with the Appellate Authority. The premises had been taken on rent by Dr.Kartar Singh prior to the independence of this country and since then it has continued to remain in the possession of the tenants. On the aforesaid basis the Rent Controller ordered the eviction of the petitioner. These findings of the Rent Controller were affirmed by the Appellate Authority

with the following observations :-

“13. Appellants claimed that after the death of Tarlochan Singh the shop was being used as sports goods shop and that does not amount to change of user. The shop in dispute was being used as a clinic before partition of the country previously by Dr.Kartar Singh and thereafter by Dr.Tarlochan Singh. After the death of Dr.Tarlochan Singh respondents started using the shop other than the purpose it was being used and started selling the sports goods without the consent of the landlady and thus it is clear from the evidence of the appellants that the appellant changed the user of the shop in dispute. Therefore, the applicant/landlady is entitled to the possession of the demised shop. I put my reliance upon 1996 (1) Rent Control Reporter, page 384 in case titled as Ram Parshad vs. Ved Parshad where in it has been held as under :-

“Haryana Urban (Control of Rent and Eviction) Act, 1973 Section 13(2) (ii) (b) – Change of user – shop let out for business of Bharbhujia (selling of roasted and parched grams) – Tenant started dealing in good grains – Held it was change of user – Tenant liable

to ejectment.”

The shop in dispute was used by the tenant for more than 50 years. Tenant is not the owner of the shop. In change fact after the death of Tarlochan Singh the respondent changed the user of the shop and started selling the sports goods and the applicant/landlady wanted to the possession of the shop for her use. It has also been held in the citation referred above as under :-

“Tenant and his predecessors in possession of shop for 50 years. A tenant is not owner of the shop – Having enjoyed it for 50 years it is time that the owner gets back the possession.”

14. The premises in dispute was let out for the purpose of running a clinic and in the said shop previously Dr.Kartar Singh was running the clinic and after his death Dr.Tarlochan Singh, appellant started running his clinic. After the death of Dr.Tarlochan Singh, appellant started running the shop of sports goods and thus changed the user of the shop without the consent of the landady.

15. In view of the discussion made above and considering that the appellants used the premises for more than 50 years and after the death of

Tarlochan Singh, appellants changed the user of the shop without the consent of the landlady, it is clear that appellants have changed the user of the shop and thus trial court has rightly decided this issue in favour of the applicant.”

Learned counsel for the petitioners before me has raised a two fold contention. Firstly he submits that in the present case there is no written rent note. In the absence of rent note therefore he submits that no particular purpose for use of the premises was there and therefore even if the purpose has been changed it would not amount to change of user. Secondly he submits that the courts have now taken a very liberal view in cases where user of premises has been changed and even if the user in the present case was changed from running of Medical Practitioner's clinic to selling of Sports' goods, the same should be permitted as it does not impair the utility of the shop or damage the same. As against this learned counsel for the respondent submits that present is a case where it is admitted between the parties that there is no rent note. However he submits that it is the admitted position that the shop in dispute was let out for the purpose of running Medical Practitioner's clinic and now it is being used for selling sports' goods. Thus there is a clear change of user which is without the written consent of the landlord and therefore eviction has rightly been ordered. He further submits that the court cannot loose sight of the fact that tenant has enjoyed the premises for the last almost 60 years. He is not the owner of the premises. The landlord is entitled to get back the possession of the premises. He therefore submits that the view taken by the courts below is legal and justified and warrants no interference in this revision petition.

After hearing learned counsel for the parties and perusing the papers I do not find any merit in the pleas raised by the learned counsel for the petitioners. I agree with the learned counsel for the respondent that in the present case it is the admitted position between the parties that there is no rent note but equally so it is clear from the evidence on the record which has rightly been considered by the courts below that virtually it is admitted case of the parties that the shop had been used for Medical Practitioner's clinic right from the day when it was initially let out. Since it was let out to a Medical Practitioner it was therefore rightly used for medical practice. This user carried on right from the date of its being let out prior to independence up to 1991 when Dr.Tarlochan Singh died which would be almost four and a half decades. It is thereafter that the user was changed without the written consent of the landlord. Therefore I find no error in the view taken by the courts below on this issue.

Learned counsel then submits on the basis of judgment in the case of *Mohan Lal vs. Jai Bhagwan* reported as *AIR 1988 Supreme Court 1034* and a Single Bench judgment of this Court in the case of *Jagdish Chand vs. Surinder Kumar* reported as *2005 (1) RCR (Civil) 1* that where by change of user there is no possibility of any mischief or detriment to demised premises then the change of user should be permitted. Still further he submits that the courts have now become liberal in permitting change of user from one business to another. A perusal of the judgment in Mohan Lal's case (supra) would show that there a shop had been let out to do the business of running an English Liquor Vend. The tenant however changed the user to selling general merchandise at the shop in dispute. In the facts of that case it was held that since in the rent note

there was no prohibition to change to any other business and also since the purpose remained commercial for which the shop was originally let out, the change of user was permitted. The relevant observations of the Supreme Court on which the learned counsel relies, are as hereunder :-

“....In the expanding concept of business now-a-days and the growing concept of departmental stores, we are of the opinion that it cannot be said that there was any change of user in the facts of this case which would attract the mischief of the provisions of S.13(2)(ii)(b) of the Act. The building was rented for purpose of carrying on a business, using it for another business, it will nit in any way impair the utility or damage the building and this business can be conveniently carried on in the said premises. There was no nuisance created.”

In the judgment in Jagdish Chand's case (supra) also the shop was let out for commercial purpose for selling cloth which was later used to sell note books and stationery items. Relying on the judgment in Mohan Lal's case and other judgments, the same view was taken by learned Single Judge of this Court. I am of the opinion that these observations would not apply to the facts of the present case. Here the shop had been taken on rent for doctor's clinic. The user has been changed now to carry on the commercial activity and selling sports' goods. The facts in the present case are totally different. In this view of the matter I find no merit in this submission of the learned counsel for the petitioner as well.

For the reasons aforementioned I find no error in the view taken by the learned Rent Controller and the Appellate Authority warranting interference by this Court in this revision petition. Accordingly the present revision petition is dismissed.

October 11, 2006

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(P.S.Patwalia)
Judge